



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AUG 10 2017

Jacob P. Goldstein, Associate General Counsel  
The Wall Street Journal  
1200 Avenue of the Americas – 7<sup>th</sup> Floor Legal Dept.  
New York, NY 10038

RE: MUR 7224

Dear Mr. Goldstein:

On March 22, 2017, the Federal Election Commission (“Commission”) notified your clients, News Corp (d.b.a. The Wall Street Journal) and Janet Hook, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On July 13, 2017, based upon the information contained in the complaint, and information provided by you, the Commission found that there is no reason to believe that your clients violated the Federal Election Campaign Act of 1971, as amended, or Commission regulations with respect to the allegations in this matter. Accordingly, the Commission closed its file in this matter on July 13, 2017.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel’s Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the Factual and Legal Analysis is enclosed for your information.

If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

BY: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

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1 matter under the Enforcement Priority System, by which the Commission uses formal scoring  
2 criteria as a basis to allocate its resources and decide which matters to pursue.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 The Complaints were all filed by Kelly Dale Bowers and allege nearly identical claims:  
6 that Respondents violated the Act and Commission regulations by making in-kind contributions  
7 to the presidential campaign of Senator Ted Cruz. Specifically, the alleged contributions came  
8 in the form of reporting on Cruz's announcement of his candidacy between March 22-28, 2015,  
9 and characterizing Cruz as the first Republican to announce a presidential candidacy, the first  
10 "major" candidate, the first "legitimate" candidate, or the first "official" candidate for President  
11 in 2016. Compl. at 1-3.<sup>1</sup> Bowers states that he had announced his candidacy for nomination as  
12 the Republican Presidential candidate on September 13, 2013, and claims that Respondents'  
13 reference to Cruz as the first Republican candidate led listeners and readers to believe that no  
14 other candidates existed at the time.<sup>2</sup> *Id.* at 1, 2. Bowers raised nearly identical claims in MUR

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<sup>1</sup> The Complainant filed nearly identical complaints in all nine matters. The complaints differed from each other only in the name of media organization that reported the Cruz announcement and, when applicable, the name of the journalist(s) that wrote the story, the quoted text from each separate article at issue, and in each complaint's Exhibit A, which was a copy of the news article at issue. Exhibits B-F are identical in each of the Complaints. See MUR 7218 Compl., MUR 7224 Compl., MUR 7231 Compl., MUR 7236 Compl., MUR 7237 Compl., MUR 7238 Compl., MUR 7239 Compl., MUR 7240 Compl., MUR 7241 Compl. As such we refer to the complaints collectively (the "Complaints") in this report.

<sup>2</sup> Complainant Kerry Dale Bowers filed a Statement of Candidacy with the FEC on April 28, 2014, and Kerry Bowers for President ("the Bowers Committee") filed a Statement of Organization on May 5, 2014. The Bowers Committee raised and spent a total of \$1,868, which falls below the \$5,000 minimum threshold to become a candidate under the Act and Commission regulations. See 52 U.S.C. § 30101(2). The Bowers Committee's request for termination was approved on October 8, 2015. The Complaints also state that fifty-five other Republican candidates had filed Statements of Candidacy with the FEC prior to the Cruz filing. According to FEC filings, only eight of those fifty-five candidates reported raising or spending more than \$5,000 during the campaign, and none were among the seventeen Republican candidates that were involved in the Republican Party's 2015-2016 Presidential debates and forums. The Complainant concludes that the news reports were fabricated and limited his ability to raise funds or retain the status he had prior to the Respondents' news reports.

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1 7230 (National Public Radio). On June 14, 2017, the Commission found, based on the press  
2 exemption, there was no reason to believe those respondents violated the Act.<sup>3</sup>

3 The Respondents in MURs 7224, 7236, 7237, 7238, 7239, 7240, and 7241 filed  
4 responses to the Complaints (the “Responses”). The Responses assert that the Respondents are  
5 members of the news media, and describe the Respondents in the respective matters as press  
6 entities, journalists, news magazines, and news sources, whose reporting falls squarely within  
7 the Act's media exemption.<sup>4</sup> The Responses further state that the Respondents are independent  
8 media organizations that are not owned or controlled by a political party, political committee, or  
9 federal candidate.<sup>5, 6</sup>

10 **B. Legal Analysis**

11 The Act and Commission regulations exclude from the definitions of “contribution”  
12 and “expenditure” the cost incurred in covering or carrying a news story, commentary, or  
13 editorial by any broadcasting station, newspaper, Web site, magazine, or other periodical

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<sup>3</sup> Certification MUR 7230 (National Public Radio; Audie Cornish) June 14, 2017.

<sup>4</sup> MUR 7224 Resp. at 2; MUR 7236 Resp. at 1; MUR 7237 (Thomson Reuters) Resp. at 1-2; MUR 7237 (Yahoo! Inc.) Resp. at 1-3, Ex. A at 1; MUR 7238 Resp. at 1, 3-4; MUR 7239 Resp. at 2; MUR 7240 Resp. at 2-3; MUR 7241 Resp. at 2. No response was filed in MURs 7218 and 7231, however it appears that the respondents in MURs 7218 and 7231 are members of the media whose reports fall squarely within the Act's media exemption.

<sup>5</sup> MUR 7224 Resp. at 2; MUR 7236 Resp. at 1-2; MUR 7237 (Thomson Reuters) Resp. at 2; MUR 7237 (Yahoo! Inc.) Resp. at 1-3, Ex. A at 1; MUR 7238 Resp. at 3; MUR 7239 Resp. at 2; MUR 7240 Resp. at 2-3; MUR 7241 Resp. at 2. There is no allegation in the Complaints that the respondents in MURs 7218 (The New York Times Company) and 7231 (Cable News Network (CNN)), which are recognized as independent press entities, are owned or controlled by a political party, political committee, or federal candidate.

<sup>6</sup> Respondents in MURs 7224 and 7239 also assert First Amendment defenses in their responses. See MUR 7224 Resp. at 3; MUR 7239 Resp. at 3-4. Because the communications at issue are clearly covered by the media exemption, the Commission does not need to reach these secondary arguments. Respondents in MUR 7237 (Yahoo! Inc.) also cite 52 U.S.C. § 30104(f)(3)(B)(i), asserting that the news story was not an independent expenditure or electioneering communication, and state that “no reasonable reader” could interpret the story as an appeal to vote for or against a specific candidate. See MUR 7237 (Yahoo! Inc.) Resp. at 2-3.

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1 publication, including any Internet or electronic publication, unless such facilities are owned or  
2 controlled by any political party, political committee, or candidate.<sup>7</sup>

3 The Commission uses a two-step analysis to determine whether the media exemption  
4 applies. First, the Commission considers whether the entity in question is a media entity,  
5 focusing on whether the entity produces, on a regular basis, a program that disseminates news  
6 stories, editorials, and/or commentary.<sup>8</sup> Second, the Commission considers two factors in  
7 determining the scope of the exemption: (1) whether the press entity is owned or controlled by a  
8 political party, political committee, or candidate; and, if not, (2) whether the media entity is  
9 acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its  
10 “legitimate press function”).<sup>9</sup> With respect to the second factor, when determining whether an  
11 entity is engaging in a legitimate media function, the Commission examines (1) whether the  
12 entity’s materials are available to the general public; and (2) whether they are comparable in  
13 form to those ordinarily issued by the entity.<sup>10</sup>

14 It is unrefuted, and the record indicates, that the Respondents produce news stories on a  
15 regular basis; the Respondents are not owned or operated by a political party, political committee,  
16 or candidate; and when the Respondents disseminated the news stories at issue, they were  
17 operating within a legitimate press function. Therefore, the Respondents’ activities in this matter  
18 fall within the media exemption, and the Commission finds no reason to believe that the  
19 Respondents violated the Act and Commission regulations.

<sup>7</sup> See 52 U.S.C. § 30101(9)(B)(i); see also 11 C.F.R. §§ 100.73 (excluding *bona fide* news coverage from the definition of “contribution”); 100.132 (same as to the definition of “expenditure”).

<sup>8</sup> See Advisory Opinions 2010-8 (Citizens United); 2005-16 (Fired Up!); and 1996-16 (Bloomberg).

<sup>9</sup> See *Reader’s Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

<sup>10</sup> *Id.*

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